

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File Number EB-04-TP-560
Jeremy R. Riels	)	
Cross City, Florida	)	NAL/Acct. No.200532700008
	)	
	)	FRN 0013442918
	)	

**FORFEITURE ORDER**

**Adopted:** August 29, 2005

**Released:** August 31, 2005

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of six hundred fifty dollars (\$650) to Jeremy R. Riels for willful violation of Section 301 of the Communications Act of 1934, as amended (“*Act*”).<sup>1</sup> The noted violation involves Mr. Riels’s operation of a radio transmitter on 156.875 MHz (VHF marine channel 77) without Commission authorization.

**II. BACKGROUND**

2. In response to a complaint filed by the United States Coast Guard (“USCG”), the Tampa Office of the Enforcement Bureau (“Tampa Office”) initiated an investigation into the unauthorized use of marine VHF frequencies in and around the USCG receive site in Dixie County, Florida. On December 8, 2004, agents from the Tampa Office monitored a signal on 156.875 MHz (VHF marine channel 77) and heard a conversation between hunters about the location of their hunting dogs in the forest. The agents used radio direction finding techniques to determine that the source of the signal on 156.875 MHz was coming from a 1997 brown Silverado Chevrolet pickup truck in Dixie County, Florida. The agents observed a radio transmitter installed in the vehicle. Mr. Riels, the driver and only occupant of the vehicle, was questioned and admitted to operation of the radio transceiver installed in his vehicle. He stated that he used this radio, as opposed to a CB radio, which could be used legally, because the CB band had too much interference. A search of Commission records provided no authorization for Mr. Riels to operate on this frequency.

3. On May 9, 2005, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* to Mr. Riels in the amount of ten thousand dollars (\$10,000) for the apparent willful violation of Section 301 of the Act.<sup>2</sup> Mr. Riels filed a response to the *NAL* on June 8, 2005, requesting cancellation or reduction of the forfeiture based on inability to pay.

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<sup>1</sup>47 U.S.C. § 301.

<sup>2</sup>*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532700008 (Enf. Bur., Tampa Office, May 9, 2005) (“*NAL*”).

### III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>3</sup> Section 1.80 of the Commission's Rules ("Rules"),<sup>4</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Mr. Riels' response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>5</sup>

5. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license issued by the Commission.<sup>6</sup> The frequency 156.875 MHz has been assigned to VHF Marine Channel 77 for maritime services.<sup>7</sup> Section 80.373(f) of the Rules specifies that VHF Marine Channel 77 may only be used for ship to ship communications.<sup>8</sup> Section 80.13 of the Rules states that stations in the maritime service must be licensed either individually or by fleet.<sup>9</sup> Ship stations may also be licensed by rule under certain circumstances without an individual license.<sup>10</sup> However, ship stations are defined as those radio stations located on vessels not permanently moored.<sup>11</sup> On December 8, 2004, agents from the Tampa Office determined that Mr. Riels operated a radio transmitter on a VHF marine channel from a land-based vehicle. Mr. Riels admitted to operating the radio transmitter. Mr. Riels states in his response to the *NAL* that he did not know it was illegal to use a radio transmitter in this way and that many hunters in the area engage in the same activities. A violator need not intend to violate the Act or the Rules or to cause interference for a violation to be willful.<sup>12</sup> Mr. Riels deliberately operated his radio transmitter on 156.875 MHz. The Commission's records showed that Mr. Riels did not have a license to operate this station and does not qualify to be licensed by rule. Thus, based on the evidence, we find that Mr. Riels willfully<sup>13</sup> violated Section 301 of the Act by

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<sup>3</sup>47 U.S.C. § 503(b).

<sup>4</sup>47 C.F.R. § 1.80.

<sup>5</sup>47 U.S.C. § 503(b)(2)(D).

<sup>6</sup>47 U.S.C. § 301.

<sup>7</sup>See 47 C.F.R. § 80.373(f).

<sup>8</sup>*Id.*

<sup>9</sup>47 C.F.R. § 80.13.

<sup>10</sup>47 C.F.R. § 80.13(c).

<sup>11</sup>See 47 C.F.R. §§ 80.5, 80.13.

<sup>12</sup>See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>13</sup>Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

operating a radio transmitter without the required authorization from the Commission on December 8, 2004.

6. In his response to the *NAL*, Mr. Riels asserts that a \$10,000 forfeiture would produce a financial hardship and requests that the forfeiture be cancelled or significantly reduced. The Commission has determined that, in general, an entity's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>14</sup> After reviewing Mr. Riel's tax returns, we conclude that a reduction of the forfeiture to \$650 would be appropriate.

7. We have examined Mr. Riels' response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Mr. Riels willfully violated Section 301 of the Act. Although cancellation of the proposed monetary forfeiture is not warranted, reduction of the forfeiture amount to \$650 is appropriate based on Mr. Riels' demonstrated inability to pay.

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,<sup>15</sup> Jeremy R. Riels **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six hundred fifty dollars (\$650) for willfully violating Section 301 of the Act.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>16</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>17</sup>

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<sup>14</sup>See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

<sup>15</sup>47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>16</sup>47 U.S.C. § 504(a).

<sup>17</sup>See 47 C.F.R. § 1.1914.

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Jeremy R. Riels at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau